

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND – ODESSA DIVISION**

UNITED STATES OF AMERICA,

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CRIMINAL NO. 7:22-CR-49

v.

**AGHORN OPERATING, INC.,
TRENT DAY, and
KODIAK ROUSTABOUT, INC.**

RENEWED MOTION TO DISMISS COUNT TWO

In our motion to dismiss count two (doc. 28), we argued that the term “ambient air” means air to which the public has access, i.e., air beyond the fence-line of the lease in question. In its Order denying that motion, the Court noted that “neither party argues that the term “ambient air” is ambiguous.” Doc. 48 at p. 4. At one point in the hearing on this motion, the Court asked defense counsel if the term was ambiguous, and counsel recalls answering “no.”

We wish to clarify that answer and renew the motion. The defense was arguing that “ambient air” in the 1990 “endangerment” statute should be given the same meaning as it has in the 1970/1971 “NAAQS” statute/regulation and, if that meaning were followed, the term was not ambiguous. However, unguided by the NAAQS regulation, our position is that the term “ambient air” has no plain meaning, except that it must mean something less than all “air.”

In our written pleadings, we argued that the term ““ambient air” is at best “ambiguous” and must therefore be construed in the defendants’ favor,” and that “[t]he rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants” Doc. 28 at 24 (Motion to Dismiss); *see also* Doc. 40 at 14-15 (courts “resolve ambiguity in [the defendant’s] favor”); Doc. 44 at 3 (arguing that “ambient air” is a “term of art;” Doc. 28 at 23 (assigning “ambient air” a different meaning would present “fair notice” concerns).

We file this motion to preserve that argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I filed this motion in the Court's electronic filing system.

/s/ David Gerger
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